IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

(1)- S.B.CR MISC.PETITION NO. 1412/2006
(Kamlendra Singh & Anr. Vs. State & Anr.)

(2)- S.B.CR MISC.PETITION NO. 1188/2006
(Kamlendra Singh & Anr. Vs. State & Anr.)

(3)- S.B.CR MISC.PETITION NO. 1189/2006
(Kamlendra Singh & Anr. Vs. State & Anr.)

(4)- S.B.CR MISC.PETITION NO. 1190/2006
(Kamlendra Singh & Anr. Vs. State & Anr.)

Date of Order : 30.07.2007

HON'BLE MR. SATYA PRAKASH PATHAK,J.

Mr. Mukesh Vyas, for the petitioners.
Mr. Ashok Upadhyay, Public Prosecutor for State.

BY THE COURT:

By this bunch of petitions, comprising of Criminal Misc. Petition No.1412/2006, 1188/2006, 1189/2006 and 1190/2006, challenge has been made to the orders dated 26.7.2006 passed by Additional Civil Judge (Jr.Div.) No.3, Jodhpur, whereby cognizance has been taken against the petitioners. Since the facts and the point of law involved in

these cases is almost similar, therefore, by a common order, these petitions are being disposed off.

The facts of these cases are that the Complainants, who were agents of the company under the name and style of United Agro Growth and Resorts Ltd., deposited various amounts of small investors in the saving scheme as advertised by the company to earn benefits. It appears that the amount collected by the agents at the relevant time was deposited in the company and thereafter cheques were issued to the agents for the amount but the same were dishonoured. It further appears that the company's Director fled from the place where the company was situated and the persons, who deposited the amount, tried to recover the amount but they failed to do so. Ultimately many complaints were filed and after investigation Final Report was given. The learned trial court, disagreeing with the Final Report, took cognizance against the petitioners vide order dated 26.7.2006. Being aggrieved by the said order of taking cognizance, the petitioners have approached this Court by filing these petitions under Sec. 482 Cr.P.C.

The contention of the learned counsel is that no reason whatsoever has been assigned while disagreeing with the Final Report submitted by the police after investigation and the learned trial court took cognizance in the cases, therefore, the orders suffer from such an illegality, which requires to be corrected and in such circumstances, proceedings pending before the learned trial court should be set aside.

Learned counsel for the petitioner has placed reliance on the judgments reported in 2006(2) R.Cr.D. 10 (Raj.) (Bhagwan Sahai Khandelwal & Ors. Vs. State of Rajasthan & Anr.), and 2007 WLC 153 (Hanumana Ram & Ors. Vs. State & Ors.)

On the other hand, learned Public Prosecutor has opposed the application and submitted that in these cases, in fact, from very beginning the petitioners had criminal intention in their mind to cheat the poor persons. The petitioners' company was not registered under the provisions of the Securities and Exchange Board of India Act, 1992 (for short 'the Act of 1992' hereinafter) and in the

advertisement published in the news-papers the news was to the effect that the company was registered under the provisions of Act of 1992. Learned Public Prosecutor submits that it shows, prima facie, ill intention on the part of the Directors of the company. As regards taking of cognizance is concerned, it is submitted that the facts and circumstances of the case do not require discussion in respect of negative report filed in present matters.

I have considered the submissions made before me. In the cases cited before me, it is propounded that Magistrate, while taking cognizance on the protest petition after filing negative report, is normally required to take into consideration the reasons given in the negative report. In the cases cited, it has also been held that in such cases reasons are required to be given by the Court while disagreeing with Final Report.

After having considered the factual and legal aspect involved in the present matters and also after perusal of the impugned orders under challenge, I find that the learned trial court while disagreeing with the Negative

Report, has not assigned any reasons worth name. Therefore, I am of the opinion that in view of pronouncements made by this Court time and again, the orders passed by the learned trial court are required to be set-aside.

In the result, the petitions succeed, impugned orders dated 26.7.2006 challenged in Criminal Misc. Petition No.1412/2006, 1188/2006, 1189/2006 and 1190/2006 are hereby quashed and set-aside. The matters are remitted back to the learned trial court with the direction to hear both sides and thereafter to pass a reasoned order taking into consideration the F.R. submitted by the police. The petitioners shall present themselves before the trial court either in person or through counsel on 6.9.2007.

(SATYA PRAKASH PATHAK),J.

Rm/-